

**ORDER OF CLARIFICATION MADE BY SHRI RAMENDRA JAKHU, FINANCIAL COMMISSIONER
& PRINCIPAL SECRETARY, GOVERNMENT OF HARYANA, EXCISE AND TAXATION DEPARTMENT,
UNDER SECTION 56(3) OF THE HARYANA VALUE ADDED TAX ACT, 2003.**

Queriest **M/s Bhaskar Gensets Pvt. Ltd. Udyog Vihar, Phase- V,
Gurgaon. TIN No. 06831827221**

M/s Bhaskar Gensets Pvt. Ltd. Udyog Vihar, Gurgaon, is a dealer registered under Haryana VAT Act holding TIN No. 06831827221 and has sought clarification under section 56(3) of the Haryana VAT Act as to whether Diesel Generating Set is machinery or not and what would be the rate of tax on sale of Diesel Generating Set under Haryana VAT Act. In the statement of relevant facts having a bearing on the aforesaid question the applicant has explained that Diesel Generating Set forms a part of plant and machinery and is covered under entry 62 of schedule 'C' viz **Plant and Machinery** and hence attracts VAT @ 4%. The applicant has further explained that Allahabad High Court in case of Commissioner, Trade Tax U.P., Lucknow V/s Elmech Engineers, Kanpur. **SC 2005 NTN (Vol. 27)-397** has held Diesel Generating Set as machinery and that in the neighbouring state of Rajasthan as well tax on Diesel Generating Set is leviable @ 4%. Further, the applicant has explained that in the meeting of Screening Committee, Haryana, for deferment of Sales Tax held on 8.1.1988, the question whether Diesel Generating Set forms a part of plant and machinery came up for consideration, and after consideration, it was decided that Generating Set forms a part of 'plant and machinery'. The matter has been examined. As per Oxford English Reference Dictionary the word 'plant' means machinery etc. used in an industrial or manufacturing process.

Now a days, due to shortage of power and erratic power supply there is wide application of Diesel Generating Sets and these Generating Sets are being used in a domestic, commercial as well as industrial sectors. Hence application of Diesel Generating Sets is not exclusively in the manufacturing sector and while interpreting as to whether diesel generating set is covered under 'plant and machinery', the use to which the same is being put is material. The applicant has cited the judgement delivered by Allahabad High Court in his defence and there is no dispute as to that decision. No doubt

when the Diesel Generating Set is being used as a standby generator to ensure uninterrupted power supply to the manufacturing plant the same is a part of plant and machinery. However when the same is being used in domestic sector, the same can not be termed as a part of plant and machinery. As to the decision of screening committee Haryana for deferment of sales tax, point under consideration in that case was of different nature and the same was whether, for the purpose of working out the cost of plant and machinery, for the purpose of deferment of sales tax, generating set forms a part of plant and machinery or not. Since generating set in such a situation facilitates the smooth running of the plant and machinery the same undoubtedly is a part of plant and machinery. However, there can not be an absolute approach in regard to interpretation of this item. When the same is being used for running the industry, it is part of plant and machinery and the provisions of Haryana VAT Act and Rules there under provide for purchase of Diesel Generating Set by a manufacturing unit at concessional rate of tax against form VAT D-1. Further overall scheme of the Haryana VAT Act and Rules there under provides for availing input tax credit by a manufacturing unit in respect of tax paid on purchases of such diesel generating set and in that respect a diesel generating set is a part of plant and machinery. However, for purpose of rate of tax in general, a Diesel Generating Set is an unclassified item and attracts VAT @ 12.5%.

Matter is clarified accordingly.

(RAMENDRA JAKHU)

Chandigarh

Financial Commissioner & Principal Secretary

Dated

to Government, Haryana, Excise and Taxation Department.

Issued vide letter No. 287-289/ST-1, Dated 5/3/2010